IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

CRP.No. 327 of 2005()

AS.86/2002 of ADDL. DIST. COURT (FAST TRACK-II) ALAPUZHA.
IP.10/2001 of PRINCIPAL SUB COURT,ALAPPUZHA

.....

REVN. PETITIONER: APPELLANT IN AS/PETITIONER IN LP.

M.A.PRABHAKARAN, S/O.AYYAPPAN,
AVALOOR VEEDU, ZILLA COURT WARD,
ALAPPUZHA.

BY ADV. SRI.M.JACOB MURICKAN

RESPONDENT: RESPONDENT IN AS./COUNTER PETITIONER IN LP.

THE KERALA STATE COIR CORPORATION
CANAL WARD, ALAPPUZHA NOW HAVING OFFICE NEAR
KANNAN VARKEY BRIDGE, ALAPPUZHA REPRESENTED BY
THE MANAGING DIRECTOR.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.915/05 IN C.R.P.327/05

CLOSED

8.8.2007 SD/- PIUS C.KURIAKOSE, JUDGE

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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C.R.P.No.327 OF 2005

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DATED THIS THE 8th AUGUST, 2007

O R D E R

In this Civil Revision Petition the petitioner who was the petitioner in I.P.No.10 of 2001 on the files of the Subordinate Judge's Court, Alappuzha impugns the order of the learned Subordinate Judge dismissing the I.P. as not maintainable and the judgment of the District Judge dismissing the appeal against the order in the I.P. The ground on which it was held that the I.P. is not maintainable was that the petitioner himself had filed a previous I.P. (I.P.No.12 of 1980) which was dismissed for default and fresh I.P. is not maintainable in view of sub-rule (1) of Rule 9 of Order IX C.P.C. which says that the plaintiff will be precluded from bringing fresh action in respect of the same cause of action when a plaint is dismissed wholly or partly under Rule 8. The trial court relied on the judgment of this Court in **Vasu v. Popular Bank** (1987 (2) KLT 288) and rightly found that the provisions of Order IX Rule 8 and Rule 9 are applicable to proceedings before Insolvency Court also.

2. I do not find any infirmity about the impugned orders. At the same time, I dispose of the Civil Revision Petition directing the petitioner to file appropriate application before the Subordinate Judge's

Court seeking restoration of I.P.No.12 of 1980. If such an application is filed by the petitioner within three weeks from today, the Sub Court will exclude from the reckoning for the purpose of limitation under Section 14 of the Limitation Act, the time during which I.P.No.10 of 2001, A.S.No.86 of 2002 and this Civil Revision Petition were pending before the respective courts and also a further period of three weeks from today. It is open to the petitioner to convince the trial court that there was sufficient cause as to why he could not file restoration petition prior to the periods which are excluded from the reckoning as per this order. It is clarified that any decision taken on the restoration application by the concerned court will not stand in the way of the petitioner urging all the contentions which are available to him against arrest and attention before the execution court concerned. The order of stay presently passed will continue for a period of one month from today.

There will be no order as to costs.

(PIUS C.KURIAKOSE, JUDGE)

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WPC.1920/05

In view of the subsequent event of the substantial portions of the decree-debt being paid by the petitioner-judgment-debtor, I am of the view that it is not necessary that the merits of the grounds raised against the impugned order be examined by this Court. The circumstance that the petitioner is no more also, in my opinion, need not deter this Court from disposing of this Writ Petition.

The Writ Petition is disposed of directing that the order of stay presently passed will continue for another four months from today. Mr.Panicker, counsel for the petitioner has informed me that the legal heirs of the petitioner have already been informed about the pendency of this case. The legal heirs of the deceased petitioner will seek their impleadment before the court below and the court below will pass appropriate orders on the application for impleadment, once the same

is filed by them. It is open to the legal heirs of the deceased petitioner to avail the benefit of the stay order which is being continued as directed above and sort out the issue with the decree-holder in the meanwhile.